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U.S. Congress. House.

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Legalizing worker's right  
to work and to share of...

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1932

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BUSINESS

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Un38U. S. Congress. House. Committee on ways and means.

Legalizing worker's right to work and to share of available employment. Hearings before the Committee on ways and means, House of representatives, Seventy-second Congress, first session, on H. R. 7448, a bill giving the protection of the law to the worker's right to work and guaranteeing him an equal share of the employment available; forming trade associations for industries and their employees doing an interstate business, in order to enable such industries to stabilize business and to provide certain benefits for their employees, to wit:

(Continued on next card)

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BUSINESS

264  
Un38U. S. Congress. House. Committee on ways and means.

Legalizing worker's right to work and to share of available employment ... (Card 2)

(A) life and disability insurance, (B) workmen's accident compensation, (C) workmen's pensions, (D) unemployment insurance; and imposing certain excise taxes. June 9, 1932. Washington, U. S. Govt. print. off., 1932.

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James W. Collier, chairman.

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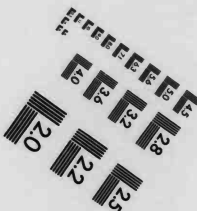
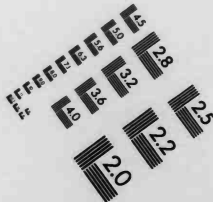
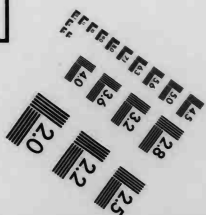
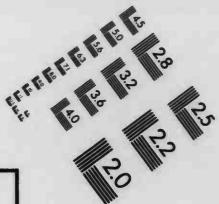
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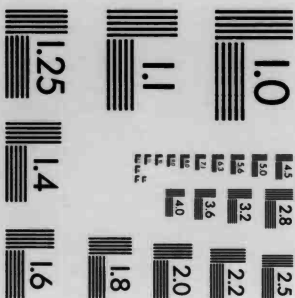


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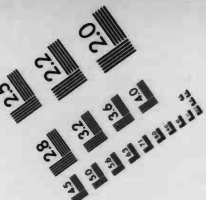
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U.S. Cong. House. Committee  
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to work, and to share  
of available employment.

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School of Business

**Legalizing Worker's Right to Work  
and to Share of Available Employment**

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**HEARINGS**

BEFORE THE

**COMMITTEE ON WAYS AND MEANS  
HOUSE OF REPRESENTATIVES**

SEVENTY-SECOND CONGRESS

FIRST SESSION

ON

**H. R. 7448**

A BILL GIVING THE PROTECTION OF THE LAW TO THE WORKER'S RIGHT TO WORK AND GUARANTEEING HIM AN EQUAL SHARE OF THE EMPLOYMENT AVAILABLE; FORMING TRADE ASSOCIATIONS FOR INDUSTRIES AND THEIR EMPLOYEES DOING AN INTERSTATE BUSINESS, IN ORDER TO ENABLE SUCH INDUSTRIES TO STABILIZE BUSINESS AND TO PROVIDE CERTAIN BENEFITS FOR THEIR EMPLOYEES, TO WIT: (A) LIFE AND DISABILITY INSURANCE, (B) WORKMEN'S ACCIDENT COMPENSATION, (C) WORKMEN'S PENSIONS, (D) UNEMPLOYMENT INSURANCE; AND IMPOSING CERTAIN EXCISE TAXES

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JUNE 9, 1932



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1932



# Legislating Worker's Right to Work and to Share of Available Employment

## HEARINGS COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES SEVENTY-SECOND CONGRESS, FIRST SESSION

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 EDWARD E. ESLICK, Tennessee.  
 JOHN W. McCORMACK, Massachusetts.  
 CLEMENT C. DICKINSON, Missouri.  
 DAVID J. LEWIS, Maryland.  
 FRED M. VINSON, Kentucky.

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## LEGALIZING WORKER'S RIGHT TO WORK AND TO SHARE OF AVAILABLE EMPLOYMENT

THURSDAY, JUNE 9, 1932

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
Washington, D. C.

The committee met at 10.30 o'clock a. m., Hon. James W. Collier (chairman) presiding.

The CHAIRMAN. Gentlemen of the committee, we have met pursuant to the action of the committee on yesterday to hear Mr. Lewis on his bill, H. R. 7448.

Mr. Lewis, if you are ready to proceed, we shall be glad to hear you at this time.

### STATEMENT OF HON. DAVID J. LEWIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND AND A MEMBER OF THE COMMITTEE ON WAYS AND MEANS

The CHAIRMAN. Mr. Lewis will be permitted to continue until he has concluded his statement.

Mr. LEWIS. Mr. Chairman, I requested a hearing on H. R. 7448, bill that I introduced on January 11, 1932, but it is my purpose to make some changes in that bill and introduce the revised bill within the next few days. I would like to have the new bill printed in the hearings.

The CHAIRMAN. Without objection the bill will be included in the record.

(The bill referred to—H. R. 12821—is printed at the end of Mr. Lewis's statement.)

### THE RIGHT TO WORK

Mr. LEWIS. Mr. Chairman, my theme is the right to work. I am proposing that Congress provide it with legal sanctions, with the same legal protection accorded to rights of property.

On returning from Europe about a year ago I was often asked, "How did you find things over there?" My answer was that in Holland, Belgium, Switzerland, and in France, things looked about their normal, but that in England and in Germany, conditions resembled those prevailing in the United States, but that the agony was taken out of it for the workers by their social insurance systems.

The prime ministers do the worrying over there, and why shouldn't they? Certainly governments have been doing everything they could to create unemployment. They have supported the sciences, they have subsidized the inventors with exclusive patents, they

have promoted labor-saving devices, they have chartered great industrial machines for mass production; all to lessen the labor necessary in production for the benefit of society. And their reduction policy has succeeded. Eight men now do the work of ten men a generation ago. And millions are disemployed. Then who should do the worrying when these men willing to work find their jobs taken away? Let the prime ministers find jobs for the men their policies have disemployed, or compensate them. The prime ministers of Europe have accepted this duty, and the dole is their method of indemnifying the disemployed. Indemnification is due. But is the dole a necessary or the best method?

A large part of our unemployment is due directly to the reduction of labor achieved in this way. For this economy in labor we have to thank the sciences, invention, our patent systems, industrial organization, and efficiency engineering. And we do thank them! Yes; we thank them for these great contributions to human progress. It is doubtless true that in the long run it is desirable that the work of society should be accomplished with the minimum of labor. But it is only desirable, I affirm here to-day, on one condition, and that is that no fundamental right of the human being shall be denied in doing it.

The world does not owe a man a living, but just as surely as the principles of right are essential to civilization the world does owe a man a chance to make a living.

For the human being has a right to work, a right as binding on the conscience as the rights of property. If as a matter of state policy the prime minister, by chartering large corporations for mass production, by subsidies to the inventor and support of science and engineering, has encompassed society's desire to cheapen products by reducing the amount of labor essential then he ought to accept responsibility to the workers which his policy disemploys. Equality before the law. We boast of our equality before the law—but do we give it to such disemployed workers?

Gentlemen, your home city government finds it necessary to cut a new street across from one avenue to another. The property owner objects, but you override his sentiment in the matter with the argument that the convenience of society must prevail over his desires; and so you evict him from the property, but you do not evict him until you have made just compensation for the rights taken away. Shall we be less just to the worker evicted from his job for the convenience of society? Shall he be evicted from his livelihood without any compensation? What then becomes of our guaranty of equality before the law?

Are the rights of the workman to hold his job to earn his living less sacred? Are they less to be respected by the lawmaker than these rights of property? Who can say that this disemployed worker is without a just claim upon society? Should society take all the gains of industrial progress and unload the incidental losses on this worker?

Mr. Chairman, may I say that legal institutions to protect and effectuate this right of the workman, to provide true legal sanctions for this right are practicable and not too difficult. They do not now exist only because of the neglect of the lawmaker just as workmen's accident compensation laws were long neglected.

Are the neglected rights of these disemployed of sufficient moment? Well, even in 1929, in the midst of our supposed great industrial success, we had 2,000,000 "men at the gate" able and willing to work, denied their share of opportunity to earn their bread.

#### EQUAL RIGHT TO SHARE OF AVAILABLE WORK

If men have a right to work, it follows, of course, that they have an equal right to work, and to an equal share of the employment available.

Data supplied by the Department of Labor now nearly a year old, make it clear that by introducing a 5-day week of eight hours, in the cotton-goods industry, 34 per cent more employees could be taken on. In the same way in the woolen and worsted goods industry, 21 per cent more men could have been taken on; and embracing a total of employees of 8,778,156 in different trades a 5-day week would have permitted the employment of 2,402,818 additional persons.

Mr. ESLICK. Mr. Lewis, may I ask one question?

Mr. LEWIS. Yes.

Mr. ESLICK. The legal right to regulate the number of hours and the number of days, have these questions ever been passed on by the Supreme Court of the United States?

Mr. LEWIS. I would like to defer that part of the discussion until the end.

Mr. ESLICK. I have never had occasion to look into it.

#### DISCRIMINATION AGAINST WORKERS

Mr. LEWIS. We should be able to rely on the natural instincts to apply this humane principle of equal rights, and often we can. But, unfortunately, its violation is rather general. A depression occurs, cutting down normal work demands by one-third, that is, from six days a week to four. The management in many cases furloughs one-third of the men, that is, gives four men six days a week instead of giving its six men four days a week. The management has no moral right to discriminate in this way against one-third of its men; no more right than it has to discriminate among its stockholders. If the net income of the company should fall short one-third, it would not pass the dividend as to one-third of its stockholders in order to pay a full dividend to the others. But the stockholders are protected; their rights have been granted legal sanctions. The lawmaker has legalized the moral principle of equipartition of the available income for their protection. In former times you remember, an insolvent debtor could give all his assets to the creditors he preferred, ignoring the others. But the social conscience rebelled against this discrimination, and the insolvency laws now compel a proportional partition of the assets among the creditors.

Mr. Chairman, why not divide the available employment equally? Unfortunately, while a number of industrial leaders accept the obligation and apply it scrupulously, perhaps a majority of them do not.

The President's Unemployment Commission some months ago reported complainingly of this matter. Sometimes the violation is at the instance not of the management but of a faction among the employees. I have such a case before me. Railway engine house

men took a secret ballot. The senior employees were able to out-vote the juniors, and demanded of the company a reduction of forces rather than a reduction of hours. The company, perhaps feeling a kind of duress, yielded. Thus the seniors pushed the juniors off the raft, four seniors getting a 6-day week, and two juniors being outlawed. It became necessary for me to take up this subject of discrimination in awarding the available employment with the president of one of the premier railway systems of the United States. Since I come from Maryland, I should say that it did not happen to be the president of the Baltimore & Ohio Railroad. We had quite a frank correspondence. The significance of the correspondence may be stated as follows:

Mr. Chairman, the manager admitted such discrimination in awarding the employment available. The traffic of the railroad was down about one-third. It was necessary that the management restrict expenses. Sometimes meetings of the men were held as to distributing the employment. Where open meetings of the men were held, the principle of equality was recognized. But on occasions there were secret meetings of the men. Then what happened? The seniority rule figured, a rule of wide application in the railroad industry. At secret meetings the seniors prevailed and when the employment was off one-third instead of the vote being to give 6 men 4 days a week, the vote was to give 4 men 6 days a week.

Gentlemen, I am informed that even now it frequently happens under this seniority rule that some employees are realizing from 36 to 40 days in the month, while the wives of their brother employees may be vainly seeking for the last pound of flour in the barrel. The rule as to seniors and juniors is not justly applicable to such a situation. It was intended as a protection and justly, too, to prevent boss favoritism in determining promotions. But applied to deprive a minority of their equal rights to work, it is indefensible. I am informed that employees have always voted for an equal division of work when assembled in open session. In secret session the larger faction was willing to outlaw a minority.

I have two observations to make about the parties to this incident. First, as to the workmen who did it, they started a new form of blacklist, a blacklist against their fellows, and their blacklist is not a bit less odious than the blacklist of an employer. And, second, as to the employer who yielded to their discrimination, the minority thus outlawed was entitled to his protection at any cost. This manager missed a chance for real glory by refusal to stand up and take punishment; to stand up like Prime Minister MacDonald. Besides, these workers who voted their fellows out of their jobs actually received more than six days a week. The cost of the household budget has dropped some 18 per cent because of the depression, so that people now enjoying full-time work may, in effect, be receiving seven days' pay.

#### LEGAL ANALOGIES

Mr. Chairman, I repeat, this manager had no more right to discriminate against one-third of his employees than, if his net income were falling short, to outlaw one-third of his stockholders in favor of two-thirds of the stockholders on the ground that they were the

oldest or biggest of his stockholders. The moral principle is the same in both cases. Why should not the legal principle be made so?

Now, why is the minority stockholder not discriminated against when the dividend fund runs short? Obviously, because there are rules of law, and there are courts with jurisdiction to apply those rules of law to the subject matter. More recently this principle of equal partition has been recognized by Congress and applied in industrial affairs. I refer to the equitable distribution or partition of coal cars on railroads in the coal-mining field.

Mr. VINSON. Yes, I have a family reason to remember the necessity for enacting the coal-car distribution law. I think the law may also be applied to other cars.

Mr. LEWIS. Now, gentlemen, our duty, as it seems to me, is to apply this principle of equal partition to the employment field, so far as it is legislatively practicable. And when I say legislatively practicable I am thinking of a real parliament, a national parliament, which has power to act, on national subjects and on national problems; of a parliament of not less power and purpose in the world than the House of Commons of Great Britain; and the object of this discussion is to see to what extent we can apply the principle already applied to stockholders to bankrupt debtors, to the distribution of the car service of the country, to legalize the worker's right to his share of the employment asset.

#### EMPLOYMENT MOST IMPORTANT ASSET OF SOCIETY

Mr. CHAIRMAN. Again I repeat: The most important asset which society possesses to-day is its employment asset. It is far the most important asset, gentlemen. The employer may naturally assume that this employment asset wholly belongs to him. It does not belong to him wholly. It belongs also in equity to the worker who, under modern conditions, must rely upon it to feed and sustain his family. The owner is a trustee with regard to this attribute of his property, the employment attribute. He holds the property, it is true, for other equally important purposes—his own right, for example, to secure a fair return on his investment and to compensate him for his own efforts. But our present industrial system must now give recognition to the fact that it stands under obligation to provide support for the human family. No institution denies this obligation. Feudalism provided a place for every human being. Even slavery accepted the obligation, for it undertook to feed and clothe and doctor the slave, whatever might happen to crops or markets.

It is evident, gentlemen, that the moral sanctions alone are not sufficient to protect the worker in his right to work. What an incongruity, what a contradiction. Here is a right, the oldest in the world, a right which no one has ever disputed, and yet this right will not assure a single laborer a loaf of bread to-morrow. How does it happen that a right so undisputed is so ineffective in the hands of its possessor? Well after all, our modern industrial system is a newcomer in the world. Our great-grandfathers knew it not. Perhaps it has not had time to perfect itself in all its important human relations. The individualism which it supplanted evolved through thousands of years to fit the human being. It takes time, especially in the United States. I think of an incident in my own life that illustrates the lag in the development of legal institutions?



When I was a lad about 12 years of age, working in the coal mines of Pennsylvania, I witnessed an accident that left an indelible impression on my mind. The driver was starting into the mine with his mule and a couple of empty cars. The mule suddenly took a crazy spell and ran away into the darkness of the mine. There was no method of control. The runaway mule and cars continued until they came to a prop, at a switch, that was sustaining a lot of loose rock, the cars struck the switch, jumped the track, knocked out the prop, and down came the overhanging roof, smashed the cars, killed the mule, and ended the earthly career of the driver.

What happened in the office of the board of directors of the company at its next meeting? This accident was reported. They naturally said that they could not run coal mines without killing mules, without smashing cars, and so they charged up the price of a new mule and of new cars to the cost of running the business. But how about the value of the driver's life? That was different. He was an American citizen. His life had no legal value. His widow had no legal rights. But, gentlemen, if his face had been blackened by an African sun, if he had been a negro in the Alabamas before the war, then a thousand dollars at least would have been charged up to the company's operating expenses, to cover the human value contributed to the cost of running a coal mine. And now let me add that the first workmen's accident compensation law passed on this side of the Atlantic Ocean was passed by the General Assembly of Maryland in 1902; and—pardon my possible immodesty—that bill was prepared by the hand of the man who, as a boy, witnessed the accident in the coal mines of Pennsylvania.

Mr. CHINDBLOM. To complete that story, if I may ask, do you know whether anything was done for the family of that driver?

Mr. LEWIS. Yes. In those days the mines closed until after the funeral. I do not think the mines stop now. A collection was taken. The village probably buried the man. The company may have done something. But nothing of real economic consequence was done, as is now done under our accident compensation laws.

Mr. CHINDBLOM. Was there no legal theory existing then under which compensation for the loss of the dependents of the driver might be obtained?

Mr. LEWIS. No. The truth of the matter is that these accidents, which we lawyers endeavored to trace to some negligence of the employers' were accidents only. They represented the risque profession. So many miners are going to get killed; so many are going to get hurt. Now, as lawyers, stimulated by sympathy and our professional ambitions, we always endeavored to stretch the negligence laws to the very utmost, to reach the employer in the widest number of accidents, but even with the sympathy of a jury aiding us, only a small percentage of the accidents were compensated. For the others the industry escaped obligation; and who was to blame? Not the industry. The lawmakers of the country were to blame for neglect to clothe the moral rights with just legal sanctions to match industrial conditions.

Mr. VINSON. How many States in this country have workmen's compensation laws now?

Mr. LEWIS. All but four now, I think.

Mr. DICKINSON. What four States are those?

Mr. LEWIS. They are Florida, South Carolina, Mississippi, and Arkansas.

#### THE PURPOSES OF THE BILL

Mr. Chairman, let me say bluntly that it is intended by the institution set forth in the bill to give the competent workman, willing to work, a legal and enforceable right to his share of the employment, or compensation in lieu thereof. Section 1 of the bill (H. R. 7448) reads as follows:

SECTION 1. (a) That it is hereby declared as a principle of social justice that (a) the citizen possesses a right to work and is entitled to the protection of the laws in maintaining such right and in demanding an equal share of the employment available in the trade; and (b) it is also declared to be the duty of the trade association concerned to provide him with an equal share of the employment available for which he is competent; and in default to render just compensation in lieu thereof.

#### ANALYSIS OF THE RIGHT TO WORK

Mr. Chairman, let me give you here a brief outline of the mechanics of the bill:

SECTION 1. (a) Declaration that citizen has a right to work and to his share (quota) of the employment available in his trade; and in default of its allowance, compensation from the trade in lieu thereof.

(b) Duty of trade association to estimate monthly in advance hours of available work. Determine employment quota of each worker by division of work by number of competent workers registered on pay rolls and qualified applicants on lists of State accident compensation boards.

And to notify employers of such quota compensation.

(c) An excise tax imposed on employer, equal to wages of excess time given any employee, to go into quota compensation fund.

(d) Competent worker, unemployed, may apply to workmen's accident compensation commission of State for his quota of employment in his trade; which notifies trade association which may contest his competency and record. If these be good commission issues him trade certificate.

Trade certificate entitles worker to his quota of employment and it is made duty of trade association to "place" him.

Board of National Trade Association is to submit rules for determining technical competency; also disciplinary regulations in relation to discharge, suspension, or demotion for neglect or occupational misconduct, which shall be presumptively but not conclusively valid, unless as approved by Federal Trade Commission.

Incompetency shall not be imputed to worker on account of age unless worker has reached pensionable age, nor on account of a physical defect if the worker can in fact do the work involved.

(e) Employed worker may be registered in another trade on proof of competency, provided time quota of preferred trade is greater.

(f) If trade association refuses or fails to "place" worker in one week after certificate by commission, then association may be sued by worker for compensation before such workmen's accident compensation commission, which if case proved shall order trade association to pay the worker wages belonging to his denied quota of employment, to continue until quota is provided him. This order may be modified or revoked.

(g) The rate of compensation to be ordered shall be governed by the wages prevailing "in the region of the bona fide residence" of the worker.

(h) If worker applies for and proves competency in several trades, he must indicate preference for purposes of the act.

(i) Act not applicable to general officers, supervisors, professional, or secretarial employees as such nor to such employees as are not susceptible of substitution because of special skill, in judgment of Federal Trade Commission.

(j) Trade association on approval of Federal Trade Commission may suspend employment quota obligation when (1) there are no registered workers available for a corporation member, (2) in special exigencies for a definite time for the

entire association or for a specified region, or (3) in case of sharp changes in the employment situation during an estimate period may revise the employment quota.

Employment quota shall not be increased during strike or lockout, nor shall quota compensation be payable to employees affected by strike or lockout.

(k) Each trade association required to establish quota compensation fund, to consist of (1) excise taxes collected from employers for granting employment beyond quota, (2) contributions to the fund, (3) special taxes or assessments levied on members to pay quota compensation awards.

(l) Secretary national trade association to make monthly reports to Federal Trade Commission showing pending quota compensation claims and state of fund. Monthly excise tax sufficient to pay such claims is levied upon corporation members of association to be assessed by Federal Trade Commission based on number of employees, collectible in name of United States.

(m) Workmen's accident compensation commission of States to have plenary jurisdiction to enforce relevant provisions of the act, from which appeals may be taken to same courts and in same manner as in workmen's accident compensation cases.

Sec. 2. The act shall apply—

(a) To corporations doing an interstate business and employing not less than 50 persons.

(b) And engaged in the industries of (1) manufacturing; (2) mining; (3) transportation; (4) electrical communication; (5) building construction; (6) distribution of gas and petroleum products; (7) transmission of electrical energy.

(c) Industries subject to the act shall be classified by the Federal Trade Commission into trades or occupations according to products or services, guided by classification of the Bureau of the Census in case of manufactures, and of the Interstate Commerce Commission in case of transportation.

(d) Designation of trades or occupations suitable for separate national trade associations to carry out the act.

Sec. 3. National trade associations: (a) Organizations of national trade association formed and named by Federal Trade Commission to include all corporations engaged in a classified trade or occupation and to be managed by temporary board designated by the Federal Trade Commission.

(b) Designation of corporations subject to the act as member of specific association to be made by Federal Trade Commission, with right of election by any corporation, in case of overlapping of classes with which a corporation might be classified.

Sec. 4. National trade association boards: (a) Temporary board members designated by the Federal Trade Commission:

(1) Three members on behalf of the public from persons affiliated with organizations of consumers of the product or service of the association concerned, or if no such organizations, three employees of the Federal Trade Commission or other Government agency whose duties relate to the trade concerned.

(2) Three persons designated on behalf of the employees from persons affiliated with unions of workmen in the trade concerned.

(3) Three persons on behalf of employers from the management of the corporations engaged in the trade concerned.

(b) Terms of office shall be staggered so that of first appointments one-third of each set of members from the public, employers, and employees shall serve 1 year, 2 years, and 3 years, respectively (and until qualification of their successors).

(c) Meeting of the boards: (1) To organize and adopt by-laws.

(d) Permanent members of the board to be elected according to system prescribed by the Federal Trade Commission in the following manner:

(1) Three members on the part of the public from the same classes as in case of temporary members.

(2) Three members on the part of the employees from employees of corporation member of the trade association.

(3) Three members on the part of the employers from the management of the corporation member of the trade association.

(e) Service of process on the association may be on the chairman of the board by registered mail.

(f) Salaries and expenses of the members.

(1) Expenses of all members.

(2) Corporations to continue payment of wages to employee members while on association business.

Sec. 5. (a) Plans for stabilization of industry and employment shall be prepared by the national trade associations:

(1) Equal partition of available work among available workmen.

(2) Life, disability, and health insurance for employees.

(3) Workmen's accident compensation.

(4) Workmen's old-age pensions.

(5) Workmen's unemployment insurance.

(6) Stabilization of production.

(b) Operation of plans:

(1) By trade associations under its rules and regulations as approved by Federal Trade Commission.

(2) By boards in each corporation representing management and employees.

Sec. 6. Administration expenses shall be paid by members of trade association in proportion to number of employees.

Sec. 7. Definitions.

Mr. CHINDBLOM. Mr. Lewis, I wonder whether you would care to have two or three questions interposed in the very interesting statement you have made?

Mr. LEWIS. Yes; I will be glad to answer questions.

Mr. CHINDBLOM. Do you think that the 2,000,000 men or thereabouts who were unemployed and have been pretty generally unemployed in this country even in times when we do not know of any general depression, lack employment because there is no employment for them, or have lacked it because there was no employment for them?

Mr. LEWIS. Your question goes to the heart of the problem—chronic unemployment. I am glad you have asked that question.

Mr. CHINDBLOM. I may amplify it in this way: Don't you think there are many other conditions which render it impossible to avoid having a certain number of persons out of employment even in ordinary times? A good many people are not wanting employment; a good many people are moving from one place to another.

Mr. LEWIS. I am speaking of the men "at the gate," who are out of work and on the employment-seeking list.

Mr. DICKINSON. Those who want employment?

Mr. LEWIS. Those who are looking for it.

Mr. CHINDBLOM. You say there were 2,000,000 men looking for employment prior to—

Mr. LEWIS. In 1929, before the great break in the stock market. I am not presenting a remedy for the present depression. I am under no illusion that applying this rule of equipartition will "restore prosperity." But it was made evident before this depression that we had a chronic unemployment problem. Two million people were out of work in 1929, because they were denied their rights. The bill is designed as a specific remedy for these disinherited "men at the gate."

Mr. CHINDBLOM. In this matter of equal partition of employment, you would not lose sight entirely of the matter of personal capacity?

#### COMPETENCY OF WORKMAN

Mr. LEWIS. The bill requires that the workman must be competent. But who is competent to work? Must he be supercompetent? Driven by the forces of competition, employers are applying gladiatorial tests to the workers. But the workshop is not a Roman arena, even if it does sometimes call for equal courage and sacrifice. Only athletes are now acceptable as new employees; men over 40, are sentenced to beggary, without a trial or appeal. This order of things

can not stand, "A man's a man for a' that." Our industrial system must recognize each competent worker; and he is still competent, if he can work well enough to support himself or his family. Let his competency be determined under reasonable rules, by boards in which worker, management, and the public are represented. Let boards similarly constituted in each industry periodically determine the number of days work per month available, and let an excise tax be imposed on the employer granting a favored employee more than his share. The bill makes provision for all this in paragraphs (b), (c), and (d).

#### ADMINISTRATION BY NATIONAL TRADE ASSOCIATIONS

Gentlemen of the committee, in proposing his plan of old-age and unemployment insurance, etc., Mr. Swope suggested the establishment of national trade associations to administer them. His thought was that only through such a national trade association could the mobility of persons in the national trade be secured; that, if the worker disconnected with one employer, he should begin where he left off as to these benefits to which he would be contributing.

I want to stop a moment to pay my compliments to Mr. Swope and say that he is one of the industrial leaders of the country who has accepted his full responsibility in the world. He has recently declared after reviewing the industrial situation: "Since the advent of the factory system that society should have seen to it that justice was rendered for each individual and group without building up class consciousness and destroying unity and solidarity. What is really desired, is some definite assurance of employment—but in the absence of this, unemployment benefits should be provided jointly by employer and employee."

The bill begins with the acceptance of the trade association method proposed by Mr. Swope. Here is a trade, let us say, with a million competent persons ready to work. A 100,000 of them are "at the gates" seeking employment in their trade. Nine hundred thousand of them are employed. How are we going to escape a flat dole in that situation, and give the man what he is entitled to—his share of the work? Well, the trade association will have a national administrative board of nine members. Mr. Swope suggested that three be selected by the owners, three by the employees, and that three should be selected to represent the public. This board, under the bill makes monthly estimates of the amount of employment available per listed workman for the coming months.

Now, this estimating will not be a new function. These employers must now make such estimates, and, organized in this national fashion, their ability to make such monthly estimates as to the probable employment should be greatly enhanced.

Continuing the illustration, if it be found that in the coming month 25 days each will be available for 900,000 men, and there are 1,000,000 men on the list, the trade association divides the amount of available work by the number of available employees; and instead of each of the 900,000 getting 25 days, each of the 1,000,000 workers would be entitled to his quota of 22½ days.

#### THE EXCISE TAX

Now, having thus ascertained the quota of the worker, how can the industry be induced to give him his quota or share of the work? Well, the bill employs two methods—(1) an excise tax is imposed on the employer who employs any man more than his quota—an excise tax equal to the wages of the excess work granted, which would go into the quota compensation fund provided in the bill. (2) The duty to "place" him or compensate for his quota denied is placed on the trade association. And the worker can sue the trade association for the wages lost before the workmen's commission of the State.

#### PROOF OF COMPETENCY—QUALIFICATION

I found that it would be difficult to say to a particular employer, "You, sir, have got to employ this particular man." So the freedom to hire or discharge, which now obtains, is not denied individual employers by the bill.

If John Smith is out of work, and nobody in his trade will employ him, he has a right to go to the workmen's accident compensation board of his State to prove his competency in the trade. Notice is served on the trade association which may contest his application through its representatives. Two kinds of questions may be raised before the compensation board. (1) Is the workman actually competent? (2) Is he qualified? Suppose he was competent and had been employed until a month ago but was dismissed for habitual drunkenness. Here you have a case of a man, competent, who is disqualified.

Mr. CHINDBLOM. Or, let me say, for an irascible temper.

Mr. LEWIS. Yes; or, if it were on the railroad, disqualified for his failure to go out and plant a signal, which involved the safety of life and property.

Now, the trade association itself is placed under the duty to develop the rules for determining competency and qualification. As to an irascible temper, Mr. Chindblom, suppose he had been discharged for it two years ago, and they still wanted to deny him employment. Manifestly two years of deprivation would be excessive. One or two weeks might be appropriate. Industrial organizations have already worked out more or less reasonable routine to cover such matters, and the compensation boards would have all these to apply as the cases arose.

#### WORKER'S RIGHT TO SUE—COMPENSATION FUND

Let us suppose that these questions have been passed on in the workers' favor. His quota entitled him to 22½ days work last month, on the basis of the estimate, supported by the month's experience. Still no employer in the trade would give him his share of the work, and the trade association failed to place him. Then the right is given him to sue the trade association before the State accident compensation board for the wages lost and the quota compensation fund of the trade association will be responsible for such wages. Moreover, that judgment will be a continuing judgment until the trade association places him.



Mr. HAWLEY. How would you raise the funds sufficient for that work?

Mr. LEWIS. First, by the excise taxes already referred to imposed on the employer who gave other workers more than their share of the work; second, by any necessary additional excise taxes on the trade on a per capita basis which had failed to give him his adjudged share of the employment available.

Mr. HAWLEY. Would you have the same principle that the Government has adopted, that the employees themselves should contribute part of this fund?

Mr. LEWIS. To the unemployment insurance fund, yes, half and half. But as to this compensation for denial of his share of the work, no. The employers there should be responsible. The employers, supposedly, have denied him his birthright—his share of the work available. If they prefer to give him compensation rather than his share of the work in their control, that would be their own affair. Theoretically, the excise receipts derived from employers giving excess employment should equal the quota claims of those denied employment.

Mr. VINSON. Is that the only source from which the fund would be acquired?

Mr. LEWIS. Yes. Each trade would have to take care of its own disemployed. The penalty excise tax, if fully collected, would be equal to the needs of the quota compensation fund.

Mr. VINSON. But assume that they would obey the law and would not employ men more than 22½ days in a month; then your judgment would be worth nothing.

Mr. LEWIS. Additional excise taxes would be levied under the bill. But if they *fully* obeyed the law—such perfection is not expected, of course every man would have gotten his share and there would be nobody demanding compensation.

Mr. VINSON. No.

Mr. LEWIS. Each one would have gotten his share, theoretically.

Mr. VINSON. As I understood you, you said that the excise tax would be paid when the employer violated the law in employing men more than 22½ days.

Mr. LEWIS. Yes. Now, then, if he did not employ anybody in excess of his time, everybody in the trade would be employed their share of the time. There would be no disemployed to sue.

Mr. VINSON. Now, you might have in one locality a large number of men in that trade who were unemployed, and the trade in that section of the country would be within the law in employing a man 22½ days a month?

Mr. LEWIS. Yes. You have raised an important point. The theory of the legislation is that a man disemployed in Connecticut should go to Virginia if the work was only available there. Special provisions as to transportation expenses should be considered.

#### EXCEPTED EMPLOYEES

Mr. CHINDBLOM. Let me ask another question: Suppose a manufacturing establishment is engaged 12 hours, 18 hours, or perhaps even 24 hours a day; and, of course, the employment will have to be divided up into shifts for the employees. But the employer has in his employ some men—they are key men to him—that he needs all the time.

Mr. LEWIS. Yes.

Mr. CHINDBLOM. Or that he thinks he needs all the time.

Mr. LEWIS. Yes.

Mr. CHINDBLOM. In his judgment they are needed all the time.

Mr. LEWIS. Yes.

Mr. CHINDBLOM. Do you provide for that?

Mr. LEWIS. Yes. In other words, supervisory persons, a secretary—

Mr. VINSON. Persons particularly skilled?

Mr. LEWIS. Persons particularly skilled, who are indispensable, are not placed under the act. The act applies only where it can be reasonably said that the employment is substitutable. One driver in the coal mines for example would be easily substitutable for another. Paragraph (i) of section 1 of the bill provides:

The right to quota compensation shall not apply to the general officers or supervisory agents of any member corporation, nor to professional employees, secretarial employees as such, or to such positions of employment as the Federal Trade Commission shall find are not susceptible of substitution of employees because of the special skill or responsibility necessary.

#### VANISHING INDUSTRIES

Mr. McLAUGHLIN. What would you do in a case of this kind? There is a motor manufacturing company that I am somewhat familiar with. In a long building they had machines all along the wall, and each machine required two men to operate it. Some time ago the company took out all those machines and put in new ones. One man could operate two of them. Of course, a good many men in that way lost their employment. What would you do in a case of that kind?

Mr. LEWIS. The plan is as I have stated. Each man in that trade is registered, on the pay rolls of the company, or is listed as an applicant with the State accident compensation board. Both lists are combined in making up the divisor of the hours of labor available in the trade in the coming month. Each of these registered workers has a right to his quota of employment little or great. The trade association is responsible to place him, or to make compensation to him for his quota of employment.

Mr. HAWLEY. That is, if in the development of machinery, in the case of these million men, displaced, we will say 75,000, the result would be a diminution in the number of hours each person would be entitled to work?

Mr. LEWIS. Yes; just as in the case of the net income dropping, the dividend must fall.

#### WORKERS RIGHT TO SELECT TRADE

Mr. CHINDBLOM. In the particular case mentioned by Mr. McLaughlin, where instead of two men on each machine one man is employed for two machines, it would cut down the hours of labor for each one to one-fourth of the former number of hours?

Mr. LEWIS. Yes. Changes in industry are quite conceivable that would reduce the employees to one-fourth. They would still be entitled to their share, whatever it is. Of course, in the case of a



vanishing industry the workers would seek another industry. Under the bill they could enter any industry in which they proved competency. The right to work implies a right in the worker to register in a trade, or trades, of his own choice, subject only to his possessing the necessary competency. If it be objected that too many applicants may qualify in a given trade and thus pull down the quota of work below the average of other trades, the answer is that this very result will work its own correction; the trade thus affected will become uninviting for this very reason. On the other hand, occupations hitherto less desirable will tend to afford higher employment quotas and so attract those seeking larger weekly pay. Differences in the amount of the quotas of employment should tend to act like differences in wages, that is, to stimulate or discourage the demand of workers for entry into the respective trades.

#### BILL APPLIES TO ORGANIZED CORPORATE INDUSTRIES

Mr. McLAUGHLIN. I would like to ask a question or two on the scope of your plan. So far as your statement has gone, it deals with the unemployed in connection with trade associations.

Mr. LEWIS. With corporate industries; corporations employing 50 persons or more.

Mr. McLAUGHLIN. Does the machinery of the plan and the bill have application to the unemployed in the clerical field, for instance?

Mr. LEWIS. No, unless employed in the trade. For example, in the electrical industry the clerical employees would come under its operation.

Mr. McLAUGHLIN. Does it have application in any way to the unemployed outside of industrial life; for instance, in professional life?

Mr. LEWIS. No.

Mr. McLAUGHLIN. Or in any other form of human effort to maintain existence and a livelihood, other than in the industrial field?

Mr. LEWIS. No. Not to individual businesses or to the professions. It applies only to corporate industries employing 50 persons or more. But these embrace the bulk of nonagricultural workers. It may be helpful to insert a table here:

*Gainful workers 10 years old and over, by general divisions of occupations and sex, for the United States: 1930 and 1920*

CENSUS YEAR AND GENERAL DIVISION OF OCCUPATIONS	Number		
	Total	Male	Female
1930.....	48,829,920	38,077,804	10,752,116
Agriculture.....	10,471,998	9,562,059	909,939
Forestry and fishing.....	250,469	250,140	329
Extraction of minerals.....	984,323	983,564	759
Manufacturing and mechanical industries.....	14,110,652	12,224,345	1,886,307
Transportation and communication.....	3,843,147	3,561,943	281,204
Trade.....	6,081,467	5,118,787	962,680
Public service (not elsewhere classified).....	856,205	838,622	17,583
Professional service.....	3,253,884	1,727,650	1,526,234
Domestic and personal service.....	4,952,451	1,772,200	3,180,251
Clerical occupations.....	4,025,324	2,093,494	1,931,830

The bill, Mr. McLaughlin applies to the following industries of the above census.

Extraction of minerals.....	984,323
Manufacturing and mechanical industries.....	14,110,652
Transportation and communication.....	3,843,147
Total.....	18,938,122

About 19,000,000 employees should be affected out of a total of about 49,000,000 gainful workers—a pretty good slice to begin with.

#### THE TRUST FUND DOCTRINE

Mr. HADLEY. Your plan seems to be predicated somewhat upon the theory of the application of the trust-fund doctrine so far as assets are concerned, as we know that doctrine in estates of insolvency where the State laws recognize that doctrine.

Mr. LEWIS. Yes; the employment asset fund—

Mr. HADLEY. A very equitable principle, perhaps the most equitable of which I know. But if the trust-fund doctrine is to be applied as a matter of equity, in aid of relief of unemployment in industrial life, why should we discriminate in a legislative way by making such application in that little field and not extend it, make it all-embracing in the life of the country?

Mr. LEWIS. This is pioneer work. The lawmaker may find it desirable and practicable to make the application more general. I hope he will. In developing the program alone I have confined it to the corporate form of industry which presents less initial difficulties than individualistic industry.

Mr. HADLEY. Well, I wanted to get that clear. Why? You predicate this whole plan upon the original premise that you want to avoid discrimination. Now, why would you limit your aid and protection to those who are in corporate industry and not to those who are embraced in private industry, other than corporate industry?

Mr. LEWIS. Well, the consideration was the principle of relative practicability. However, you will find that in the manufacturing and industrial field, excepting agriculture, of course, that corporate management means nearly the whole.

I have not taken in under the bill, for example, merchandising houses that often take a corporate form. But manufacturing, transportation, the electrical communicating industries, the distribution of gas and of electricity, coal mining, metal mining, embrace nearly the whole industrial field.

Mr. HADLEY. In line with this discussion, I call your attention to the fact—and I think it is a fact—that owing to the imposition of various forms of what are regarded as burdens, say taxation for one as an illustration, and various other limitations and burdens placed upon the corporate form of doing business by law, both in the Nation and in the State, corporations are in a large degree disposed to and are going out of the corporate form and into partnerships and other forms of industry. Would not this have the direct effect of practically nullifying the corporate form?

Mr. LEWIS. I think it will have the reverse effect. Unless this step is taken, compensation to the disemployed will come as the dole. It is inevitable, taking the human heart as it is, gentlemen, that we are

going to take the step in the United States taken in Great Britain, Germany, and other countries. This "man at the gate," is a torment to the social conscience. He has been disemployed for the benefit of society. If the railroads and other employers decide against equal partition of employment among employees and disemploy a fourth of their employees; if President Hoover, that is, the Government, also decides against the dole, these decisions mean that these disemployed have no real rights, but may live only on the sufferance of charity. It means that they are outlaws without rights. This is anarchism; gentlemen, I reject it as monstrous. It denies the disemployed worker a place de jure within the State and leaves him an outlaw in the world. The heart of man will not stand for this even in the United States. We are slow, but we are not inhuman. Society is going to pay him a dole, if the trade does not yield him his right to work. It will follow Europe. If the trade association will do its duty, will give him his share of the employment, then you will have stopped the dole; and instead of corporate industry being deterred by the measure, will it not rather be encouraged?

Mr. HADLEY. In any event, there is that general tendency to-day; whereas formerly the tendency was toward the corporate form of doing business for the benefits derived under that form, to-day there is a definite tendency to get away from it because of conditions which have grown up. Now, that being true—and this is not upon the merits of your plan—

Mr. LEWIS. No; I understand.

Mr. HADLEY. I do not like the appearance in the legislative field of the country, of a clearly discriminating class of legislation for one type of our people as against other types.

Mr. LEWIS. Nor do I like it. The corporation presents advantages of practicability because of its larger numbers and therefore greater substitutibility of employees. Moreover, I think if corporate mass production had not replaced pure individualism in our industrial order, this problem would not be presented. It is a problem which has come with organized industry, with the corporation. The loss of wages is not the greatest loss. Persistent industry in the individual is an acquired habit. It may be lost by involuntary, habitual idleness. This is the real criticism on the dole—given as a substitute for his share of the work.

Mr. HADLEY. If there is not a way to reach the individual under our Constitution, and prima facie, without great consideration at this moment, I think that must be true, then going back to the very basic principle of morals, the principle of equity as between all of our people, why should we attempt to apply it in part where we can not apply it in its entirety?

Mr. VINSON. Oh, well, that is common in the formulation of laws. An illustration on my tongue's end is our workmen's accident compensation laws which generally except the farm and employers having a minimal number of employees.

Mr. HADLEY. I recognize that in matters of minor application, but here you are attempting to apply this to the great field of industry common to all men, and, I would say, Why should we enter a field that is strictly discriminatory in favor of one class as against those others?

## THE "DOLE" OR EQUIPARTITION

Mr. LEWIS. It is a question of time and public education. The principle of equipartition of available employment implies such limitation. I am ready to fix a 5-day-week, or a 4-day-week, to aid in such equipartition and to enforce it by a similar excise tax on all excessive employment. The opinion is widespread that society will have to resort to this method. Mr. Green, president of the American Federation of Labor, has been advocating it, and so have business men of prominence. Only recently the secretary of war, Mr. Hurley, and I had the following dialogue before this committee:

Mr. LEWIS. Mr. Secretary, you speak of the dole. May I ask you a question with regard to it? Society finds it necessary in Washington here to cut a new street across from one avenue to another. The property owner protests. But society answers that its welfare must prevail over sentiment in the matter and it constructs the street. It evicts him, but it does not evict him until it makes full compensation. I am sure you will agree that that is all right in principle.

Secretary HURLEY. That is the law of this land.

Mr. LEWIS. And it is justice. But now society grants subsidies to patentees, encourages efficiency, engineering and science, and the inventor constructs work-reducing mechanisms because of which men are thrown out of jobs that have afforded them livelihoods from their childhood. Do you call any payment made to such a man so thrown out of employment, on account of no fault of his own, willing to work, but unable to get employment—do you characterize a payment to him as a dole rather than compensation?

Secretary HURLEY. What you need to do is to further reduce the hours of labor so that a man can make an honest living and get his just distribution of the wealth of this Nation and so that all may be employed. Now, you may stagger at the reduction of the hours of labor. You may think that is going to upset us, but I have seen in my lifetime a greater reduction than that occur. If the hours of all labor were now reduced to six hours a day every one would be employed.

The answer to the employment situation is not that you shall grant anybody a gratuity. If those people to whom you are granting the gratuity had turned in an invention for the benefit of mankind, as you say, it would be proper to subsidize and pay them for that intellectual achievement. But I tell you that when, in place of giving a man an honest day's work, by which he can pay for bread for himself and his family, you attempt to give him a gratuity instead, you are insulting the very soul of labor.

Mr. Chairman, it must be remembered that this simple treatment, as proposed by Secretary Hurley, would still leave unprotected "the men at the gate," the 2,000,000 unpreferred workers of even prosperous times which it is the fundamental object of the bill to defend during times of prosperity as well as in depressions. I am ready to broaden the scope of the bill and will apply myself to the necessary detail.

The bill already applies to manufacturing, mining, transportation, communication, building construction, distribution of gas, oil, and electrical energy. There are but few noncorporate employers in these fields—a negligible number.

The equipartition principle might also be applied to the clerical occupations where the employer relation obtains, representing 4,025,324 employees. But it would hardly be applied to the professions—to doctors, lawyers, clergymen, engineers, architects, etc., who have clients rather than employers, and who numbered 3,253,884 in 1930. Nor could it be applied to ordinary farm activities, where 10,471,998 are engaged. I am not making difficulties, Mr. Chairman, but simply recognizing them. They can be conquered, I believe, with the application of a will and intelligence worthy of the subject and the exigency.

## TWO KINDS OF INVENTIONS

It is true that the early economists always said that invention need not be dreaded; that one invention would take care of another, with no deprivation of employment to the workers at length. The people who wrote that a century ago did not foresee the conditions obtaining in the present world of science, invention, and efficiency engineering.

There are two kinds of inventions, when you consider the matter fully. In one kind of invention you have the labor-saving purpose and the labor-saving effect. The ditch-digging machine, with two men operating it, and a hundred employees eliminated, is an extreme illustration of the labor-saving invention. On the other hand, the automobile, with the road construction and other employment it has entailed, is a mighty illustration of the labor-increasing invention in our age. I dread to think what the unemployment conditions in the United States might have been if the automobile had not made its advent here a generation ago.

Now, gentlemen, if there were some power in the sky to control the appearance of labor-saving and labor-increasing inventions as some power in nature controls the distribution of the sexes—one little girl, one little boy, one little girl, until they virtually matched each other in effects—the old view of this subject might still be the rational view. But the practical fact is that in every factory to-day you have an efficiency engineer; you also have a suggestion box in which the workman is invited to drop his suggestions for improvement—which in such cases always means reduction in the expense of operating and in the amount of labor essential. The emphasis—one can see it readily—the emphasis in industry is on the labor-saving invention. The invention to greatly increase human consumption, to develop new kinds of human demand for goods, does not have in modern times the organization forces behind it that the labor-reducing invention has.

## BALANCING THE FORCES OF PRODUCTION AND CONSUMPTION

Why, it was nearly 70 years ago that Clerk Maxwell, mathematical physicist, discovered the identity of the electromagnetic field with the field of light, demonstrated physically a little later by Herst the German physicist; 60 years later we have the radio. So we must have one genius standing on the shoulders of another, for 50 years before that new form of human consumption can be developed. It took about the same period to set the gasoline motor going on the roads. May I say that if the radio should quickly lead to effective television; if for a thousand dollars they could give me a television, enabling me to stay home, hear the music, see the picture, all without forsaking my pipe or rocking chair, the money to buy it would be gotten in some fashion. If they shall make it possible to cross the Atlantic Ocean in daylight, trips to Europe, not once in a lifetime, but every year may result. But with this one-sided invention the employment asset is going to grow smaller and smaller; while fewer days in the week will be available to those who can only look to their labor for the necessities of life.

Certainly gentlemen, the increasing forces of production must be taken up by the increasing forces of consumption, or we may have to go to a 3-day week with this labor economizing progress. In the past similar social programs have been inaugurated and realized, giving employment to fill up the gaps created by invention and the increasing effectiveness of man-plus-machine methods in production. This has been the history of mechanization within the past century. The public schools are an obvious and tremendous example, with expenditures in the United States alone of \$2,184,847,000 in 1928, with 831,934 teachers. And this figure does not include the many others employed about the schools or in the construction of school buildings, the printing of school books, the training of teachers; nor does it include the employees in the prodigious printing trade, having as its supportive condition that achievement of the common schools which gives us a national population able to read and desiring the productions of the printing press. Hospitalization and medical aid to the less fortunate now present a field as worthy in the twentieth century.

Another method has been the reduction of the hours of labor, which ran about 12 hours or more per day in the beginning of the nineteenth century, and, by steps, have been diminished to 11, to 10, to 8 hours, and often to a 5-day and 48-hour week. "Man does not live by bread alone," and this method is certainly worthy.

Obviously, one or both of these methods must be employed, decreasing work day or an increasing program of consumption, if a reasonable balance between the productive and consumptive forces is to be realized, and the disequilibrium now causing depressions controlled or avoided.

## PROVISION FOR EXCEPTIONAL CASES

Mr. VINSON. Recurring to the bill as it now stands assume now that a branch of a certain industry was located at a certain place where workmen did not want to live, or the management was such that the surplus employees would not gravitate toward it. The management of that industry would not have available a surplus of employees. Would you exclude them from the operations of your provisions?

Mr. LEWIS. The bill makes a special provision for such cases.

Mr. VINSON. Excusing them from paying the excise tax in the event that there was not a surplus of employees?

Mr. LEWIS. Yes. The bill makes provisions for that. It is as follows: When there are no registered workmen available who are willing to accept employment with a corporation member the employment quota obligation shall be subject to suspension by the national trade association, with the approval of the Federal Trade Commission, as to such member corporation. In special exigencies, the Federal Trade Commission, upon application of a national trade association, may, suspend operation of the employment quota requirement for a definite period, either for an entire association, or for a specified region. The national trade association may, in case of sharp changes in the employment situation during an estimate period, revise the employment quota to be effective for the remainder of such period. But the employment quota shall not be increased for any corporation member, during a strike or lockout; nor shall quota compensation be payable to



any employee during the pendency of such strike or lockout. Let me also say that the restriction on excess employment does not apply to the mill-hours. A successful mill may be running on four shifts a day and every day including Sunday.

#### OLD-AGE INSURANCE

Mr. CHINDBLOM. Going back to the general discussion of the principles underlying your plan—and I am not now taking issue with your premises, but referring to the one premise that organized society owes a man a chance to work and an employer is a trustee for his employees, subject, of course, to his own right to earn a reasonable return on his investment and a reasonable compensation for his own labor—assuming that an employer has complied with those conditions in all good faith and after years, perhaps a lifetime spent in industry, he himself, by reason of conditions not any more in his control than are the conditions of labor in the control of the laborer, loses out and has no means of earning a livelihood. Does your plan contemplate any relief for a man in that position?

Mr. LEWIS. Yes; the old-age insurance provisions of Mr. Swope are carried in this plan and the pension would bear a ratio to the salary. Employer and employee each pay half to this fund.

Mr. CHINDBLOM. Of course, he has never been, in the real sense, himself an employee.

Mr. LEWIS. If he had been an officer of the company he would fall under the purview of the insurance plan. Many provisional objections may be urged against plans like these. They are not final objections if provision can be made for them.

Mr. CHINDBLOM. Of course, these are extraordinary times, but just exactly that situation arose, for instance, in Germany, where a tremendous number of people who had not been in the real sense employees but who had been employers, and even capitalists, found themselves absolutely penniless.

Mr. HADLEY. May I observe there that I think that condition has arisen in this country in the midst of this depression in cases, not limited to those of old age, but to those who after a few years of great profit and success find themselves reduced to the point of being penniless. What would the plan contemplate with respect to them when they are not within the old-age class?

Mr. LEWIS. Well, I do not know that I can at this time answer your question, unless it be to say that like the worker they could claim their quota, if competent, in any occupation covered by the law.

Mr. HADLEY. I did not mean to divert you, Mr. Chindblom.

Mr. CHINDBLOM. An interesting case is mentioned in the papers this morning; one of the greatest employers of labor and promoters of industry in the United States, who apparently is going to be placed upon a pension by the industries which he has heretofore controlled.

#### THE LAWMAKER'S DUTY

Mr. LEWIS. Of course, as lawmakers, our obligation is to enact legislation to meet general conditions, and do the best we can for exceptions. We are under obligation, at least I have felt under obligation, to first provide legal protection for the fundamental rights

of human beings. The bill is not offered as a panacea for depressions. It is designed to remove discriminations amounting to outlawry which have become chronic in distributing employment. Society's support of invention, the sciences, efficiency engineering, its charters to large corporations for mass production, and the 40-year-old deadline were responsible for 2,000,000 "men at the gate" even in 1929. Considering their equal moral rights, this is mere outlawry, only to be excused because the individual employer "must meet competition," and because the insurance rates and old-age pension liability on his employees goes up with the average age of his men. Under this ruthless rule, with 10 men applying when 8 can do the work, it is not a question of the survival of the fit, but the survival of the athlete, without regard to moral rights or the ability of the discountenanced worker to serve faithfully in a competent way.

The bill strikes against these discriminations by prohibiting the imputation of incompetency on account of age (or physical defect) if the worker can in fact render the service unless his age entitles him to a pension under the law.

Mr. McLAUGHLIN. Would you find any difficulty in attempting to control the operations of corporations organized under State laws observing every part of the State law, operating their property and the Government of the United States coming in and directing their operations to the extent of employment and wages, and so forth?

Mr. LEWIS. To the extent of restricting the hours of employment only. It does not apply to wages—well, you are raising a subordinate legal question.

Mr. McLAUGHLIN. Subordinate?

Mr. LEWIS. I should say a very relevant but a subordinate legal question. I think it would take another morning's session to discuss the legal phases and implications of this subject. I may add a brief discussion of the legal questions in the appendix—

Mr. CHINDBLOM. After all, of course, the fundamental question is whether the control of industry, of employment and even of investment should be attempted by law, and whether that would be an improvement over the system that has prevailed heretofore. That is the fundamental issue.

Mr. LEWIS. The fundamental question as I view it is the right of the human being to an equal chance to earn his bread. That is the paramount question. Let the lawmaker consider what measures may be taken to defend that right. If no practical measures can be taken for that purpose, the lawmaker is discharged. If, however the lawmaker simply ignores it, as for a generation he neglected workmen's accident compensation, then he is a miserable delinquent, indeed.

Mr. CHINDBLOM. You might concede the right and still not reach a remedy by legislation.

Mr. LEWIS. Yes; but it does not lie in the mouth of any civilized man to make that argument until an earnest investigation of the subject, with view to a remedy, has taken place. The lawmaker has not been negligent with regard to other kinds of rights. It would take 1,000 pages to describe the legal routine which has been developed by lawmakers for the regulation of automobiles moving on our highways to-day. And as to the legal rights of property—why, a book on the law of ejectment of less than a thousand pages would now be regarded as worthless in a lawyers office, Mr. Chindblom.

There has been the plainest discrimination. Where property rights have been involved one does not find such neglect by the lawmaker. It has been unconscious, yes; I am glad to think it has not been conscious discrimination, but there has been the crudest class discrimination or neglect by the lawmaker and millions of employees are suffering because of it and will continue to suffer until we act.

Mr. CHINDBLOM. Oh, well, I am by no means denying the duty of the legislator to seek remedies, and I congratulate you, Mr. Lewis, our colleague, upon the very interesting discussion we have had on that very subject to-day.

Mr. LEWIS. I thank the gentlemen of the committee for their very great interest and patience.

The CHAIRMAN. We thank you, Mr. Lewis, for your very interesting presentation.

(Whereupon the committee adjourned.)

(The bill H. R. 12821, referred to by Mr. Lewis in his statement, is as follows:)

[H. R. 12821, 72d Congress, 1st session]

A BILL Giving the protection of the law to the worker's right to work and guaranteeing him an equal share of the employment available; forming trade associations to effectuate such rights and to enable such industries to stabilize business and to provide certain benefits for their employees; and imposing certain excise taxes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

WORKER'S RIGHT TO WORK AND TO AN EQUAL SHARE OF EMPLOYMENT; AND  
DUTIES OF TRADE ASSOCIATION

SECTION 1. (a) That it is hereby declared as a principle of social justice that (a) the citizen possesses a right to work and is entitled to the protection of the laws in maintaining such right and in demanding an equal share of the employment available in the trade; and (b) it is also declared to be the duty of the trade association concerned to provide him with an equal share of the employment available for which he is competent; and in default to render just compensation in lieu thereof.

(b) The following provisions, designed to secure such citizen in the right to work, shall be administered by each national trade association concerned hereinafter provided for under the supervision of the Federal Trade Commission. Each such association, by means of reports from member corporations provided for in this act, and from such other special reports as it may request, and information as may be available to it, shall estimate, in advance, monthly, the number of hours of work which will be available to complete the work of the member corporations of the association for each period of one month, and shall determine the monthly employment quota of the worker in such industry by dividing such number of hours of available work for all member corporations for such month by the number of employees employed by (on the pay rolls of) the members at the beginning of each such period, plus the number of unemployed persons found competent and registered with the respective workmen's accident compensation commissions at the beginning of such period, and shall notify the member corporations of the employment quota so found.

(c) An excise tax is hereby imposed on any member corporation of a national trade association which shall employ any person in the trades subject to this section in excess of the employment quota hours for the said estimated monthly period, such excise tax to be equal to one-half the wages paid for all work performed by any employee in excess of the employment quota so fixed. Such tax shall be collected as hereinafter provided, and the proceeds shall be paid into a fund to be known as the compensation fund, this fund to be used only in the payment of compensation claims under this section.

(d) Any competent worker unable to obtain employment may apply in writing to the Workmen's Accident Compensation Commission in the District of Columbia, or in the State, or Territory, of his residence, or last employment, for registration, as an applicant for work in a trade in which he is competent, giving the facts relevant to his competency and qualification in such trade, such as his full name, residence, name and place of last employer, reason for loss of employment,

employer's recommendations, if any; family dependents, if any; length of service in trade; relevant documentary evidence or references. Upon receipt of such application the workmen's accident commission shall give notice to the national trade association concerned by sending it a copy of such application by registered letter, and fixing a time for a hearing, and hear and determine any question of competency or qualification, and if the applicant is found competent and not disqualified shall issue a certificate of competency to him. And thereupon such worker shall be entitled to employment from such trade association and its members, and it shall be the duty of such trade association to take measures to provide him employment according to the quota of the employment determined to be available as above in his case. The boards of the national trade associations shall prescribe the rules of technical competency for the trades, subject to the approval of the Federal Trade Commission, and these rules shall be admissible in evidence before the workmen's accident compensation boards but shall not be taken as exclusive or conclusive standards in determining the competency of an applicant. (The word "qualification" as used in this section refers only to the integrity and disciplinary characteristics necessary in an applicant for proper performance of his duties in the trade.) The boards of the national associations shall also prescribe the rules of discipline relating to discharge, suspension, or demotion for neglect or misconduct by the workmen while employed in the trade, subject to the approval of the Federal Trade Commission. An applicant shall be adjudged competent if it appear that he can render service in the employment equaling in effectiveness and efficiency the average work of persons of his or her age engaged in such employment; and incompetency on account of age shall not be imputed to the worker unless his or her age exceeds the age at which old-age pensions are payable by the State or under the plan of the national trade association concerned; nor shall incompetency be imputed to the worker on account of any physical disability if such worker is in fact able to render the service involved.

(e) Workmen who are employed, upon proof of competency, may be registered in another trade by such workmen's accident compensation board: *Provided*, That no such registration shall be permitted unless the employment time quota of the trade sought is higher than the one for the trade in which the workman is presently employed.

(f) If such trade association and its respective corporation members shall fail or refuse to provide such worker his quota of employment in the trade or its equivalent in other employment within one week after his competency and qualification have been so determined, then such unemployed worker shall be entitled to demand, and it shall be the duty of such trade association, in lieu of such employment, to make, monetary compensation to such worker; and upon petition by such worker against such trade association the said workmen's accident compensation commission shall have jurisdiction to hear the parties, and if it determines in favor of the worker, it shall issue an order directed to the national trade association concerned to pay the worker such allowance, as it finds payable under the provisions of this act, for a period to continue until his quota of employment is provided him, if he remains without employment. Such quota compensation shall be paid by such national trade association beginning with the date and in accordance with the said order. The workmen's accident compensation board shall retain jurisdiction of the application and order and may modify or revoke the order in accordance with justice and the provisions of this act.

(g) Each national trade association shall, in obedience to such order, pay weekly to any workmen unemployed at the beginning of a quota period a quota compensation as prescribed in such order in an amount equal to the number of hours of the employment quota fixed for such period, multiplied by the hour wage in the industry. The hourly wage shall be that prevailing in the region of the bona fide residence of the unemployed applicant as determined by the workmen's compensation boards.

(h) In case an applicant applies for registration with such workmen's accident compensation commission and shows competency in several trades, he shall indicate his preference, and in the event of an application for quota compensation, he shall be entitled to apply for it in such preferred trade only. Applicants who are granted certificates of competency shall be registered by the workmen's accident compensation boards, and monthly reports of such registrations shall be made by them to the national trade association concerned.

(i) The right to quota compensation shall not apply to the general officers or supervisory agents of any member corporation, nor to professional employees, secretarial employees as such, or to such positions of employment as the Federal Trade Commission shall find are not susceptible of substitution of employees because of the special skill or responsibility necessary.

(j) When there are no registered workmen available who are willing to accept employment with a corporation member the employment quota obligation shall be subject to suspension by the national trade association, with the approval of the Federal Trade Commission, as to such member corporation. In special exigencies, the Federal Trade Commission, upon application of a national trade association, may, in its discretion, suspend operation of the employment quota requirement for a definite period, either for an entire association, or for a specified region. The national trade association may, in case of sharp changes in the employment situation during an estimate period, revise the employment quota to be effective for the remainder of such period. But the employment quota shall not be increased for any corporation member, or members, during a strike or lockout of their employees; nor shall quota compensation be payable by the national trade association to any employee of a corporation member during the pendency of such strike or lockout.

#### QUOTA COMPENSATION FUND

(k) Each trade association shall establish immediately a quota compensation fund in accordance with methods and forms to be provided by the Federal Trade Commission, from which no withdrawals shall be made except to pay quota compensation awards by workmen's accident compensation commissions. The fund shall consist of (a) all excise taxes levied for employment of persons in excess of their quota, (b) of any contributions which may be made to it, (c) and of the proceeds of any excise tax which may be placed on the corporation members of the trade association in order to pay such quota compensation awards. The Federal Trade Commission shall designate by rule the official or officials in the trade association who shall be the custodians of the fund, and the amount of the bond and methods of deposit and investment from time to time.

(l) The secretary of each national trade association shall make monthly reports to the Federal Trade Commission showing the number and the amount of the claims for quota compensation pending against such trade association, and also a statement of the amount in the compensation fund available to pay such claims. A monthly excise tax sufficient to pay such quota claims is hereby levied upon the member corporations of each of such national trade associations, and the Federal Trade Commission is hereby authorized and directed to assess the amount of such excise tax as may be necessary in quarterly periods of three months upon said member corporations in proportion with the average number of employees of each, such number to be ascertained under rules to be promulgated by the Federal Trade Commission. Such tax shall thereupon become due and payable to the custodian of such compensation fund, and on the failure of any such member corporation to pay its proportion of such tax the same shall be collectible in the name of the United States according to the laws applicable to the collection of the taxes on tobacco produced and sold in the United States.

(m) The workmen's accident compensation commissions of the respective States, of the Territories, and of the District of Columbia are hereby granted plenary jurisdiction to administer and enforce the provisions of this section. Each such workmen's accident commission may make rules and regulations to effectuate the purposes of this section, and appeals from the decisions or rulings of each such commissions may be taken to the same courts and in the manner permissible under the statutes governing such commissions in workmen's accident compensation proceedings. Such commissions shall make weekly reports to the respective national trade associations concerned of the registrations for employment provided for by this act.

#### APPLICATION OF ACT

SEC. 2. This act shall apply to corporations employing not less than fifty persons doing an interstate business and engaged in manufacturing, mining, transportation, electrical communication, building construction, distribution of gas and petroleum, and the transmission of electrical energy within the States, the Territories, and the District of Columbia. The Federal Trade Commission is authorized and directed to classify such industries into distinct trades or occupations according to their products and services and may follow in the case of manufactures the trade classifications used by the Bureau of the Census, and in the case of transportation the classifications used by the Interstate Commerce Commission, and in the case of mining the classification of the Bureau of Mines, and shall distinguish and classify the industries, trades, or occupations, suitable for organization into separate national trade associations to carry out the purposes of this act.

#### FORMATION OF NATIONAL TRADE ASSOCIATIONS

SEC. 3. (a) The Federal Trade Commission is authorized and directed to cause the corporations subject to this act, designated and classified by it under section 8 of this act, and engaged in each such trade, to form a national trade association and to give distinctive names to each such association. Such commission shall appoint a temporary board for each trade association as hereinafter directed.

(b) The Federal Trade Commission shall designate by name the corporations which shall be included in the respective trade associations; but in the event that there is an uncertain division or overlapping of the trades in which a corporation is concerned, such corporation may elect, under rules of the Federal Trade Commission, the association with which it shall become affiliated.

SEC. 4. (a) Temporary members of national trade association boards shall be designated as follows:

(1) There shall be designated by the Federal Trade Commission on behalf of the public three persons from organizations of consumers of the product or users of the services of the trade concerned, or if no such organization exist, three employees of the Federal Trade Commission or other branch or agency of the Government whose duties relate to the trade concerned but who are not interested as employers or employees or otherwise affiliated with such industry.

(2) Three persons shall be similarly designated on behalf of the employees from persons affiliated with unions or associations of workmen engaged in the trade concerned.

(3) Three persons shall be designated on behalf of the employers from the officials or managers of the corporations engaged in the trade concerned.

(b) One-third of each set of members designated as provided in subsection (a) (1), (2), and (3) above shall be designated to act as board members for a period of one year, and one-third to act for two years, and the remaining third to act for three years, and, in each case, until the qualification of their successors. The Federal Trade Commission shall designate one member of each board to act as temporary chairman thereof.

(c) Each such board shall meet in the city of Washington on call of the Federal Trade Commission. At such meeting it shall organize, provide an office, select a secretary and other necessary assistants, and shall adopt by-laws for the administration of its business under the provisions of this act. After the first meeting, meetings shall be held as provided in the by-laws of the association.

(d) Permanent members of the boards to represent the three classes referred to in subsection (b) of this section shall be elected as follows under a system of election which shall be prescribed by the Federal Trade Commission:

(1) Members on the part of the public by organizations of consumers of products or services of the trades concerned, and in the event that no such organizations exist, such members shall be designated as in the case of temporary board members on the part of the public.

(2) Members on the part of the employees by organizations or unions of employees.

(3) Members on the part of employers by the presidents of the corporations affiliated with the trade association concerned.

(e) Service of process and any notice provided for by this act may be made on the chairman or the secretary of such board by registered mail.

(f) Employee members of the boards shall be paid a regular wage or salary equal to that received from their employers for time spent on business of the board. No salary shall be paid other members of the board for services thereon. All members of the board shall be paid traveling expenses while engaged in business of the board. (And all members shall take the oath prescribed in the Constitution.)

(g) The Federal Trade Commission shall have power and is hereby directed to make such rules and regulations as may be necessary to effectuate the purposes of this section.

#### DUTIES AND OBJECTIVES

SEC. 5. (a) The national trade associations hereinafter provided for in this act shall proceed immediately after their organization to prepare plans to provide the following benefits for the member corporations and employees thereof:

- (1) Equal partition of the available work among workers entitled.
- (2) Workmen's unemployment insurance.
- (3) Workmen's accident compensation.
- (4) Workmen's old-age pensions.
- (5) Life, disability, (and health) insurance for employees.
- (6) Stabilization of production.



(b) Such plans shall be put into operation upon their approval by the Federal Trade Commission. Rules and regulations for the effectuation of such plans shall be prepared and proposed by the national trade associations and be subject to the approval of the Federal Trade Commission. Such plans and regulations when adopted shall be administered in each corporation by boards representing the management and the employees of such corporation, subject to the supervision of the national board of the trade association of such industry.

(c) Any corporation member of such trade associations which has already established and is conducting benefit plans for its employees to effectuate any of the purposes of subparagraphs (1), (2), (3), and (4) of paragraph (a) of this section, upon making it appear to the satisfaction of the Federal Trade Commission that its plan, or plans, respectively, carry benefits to the worker in the aggregate equal to or greater than the benefits accorded by the plan or plans respectively adopted by such trade association, may continue such established plan or plans in lieu of those required herein, subject to the condition that the workers' rights or benefits thereunder may be continued or transferred upon change of employment as provided in sections 2, 3, and 4 of this act.

#### ADMINISTRATIVE EXPENSES

SEC. 6. Administrative expenses of the national trade associations and their respective boards, salaries, wages, and office expenses shall be paid by the national trade associations upon vouchers of the chairman of their respective boards. The association board shall estimate the amount of the administrative expenses for the trade association annually in advance, and each corporation member of a trade association shall pay an amount thereof which shall bear the same proportion to the total estimate as the number of its employees bears to the total of employees of all corporation members of such trade association. The Federal Trade Commission shall by regulation provide for a uniform time and method of making such assessments and collections.

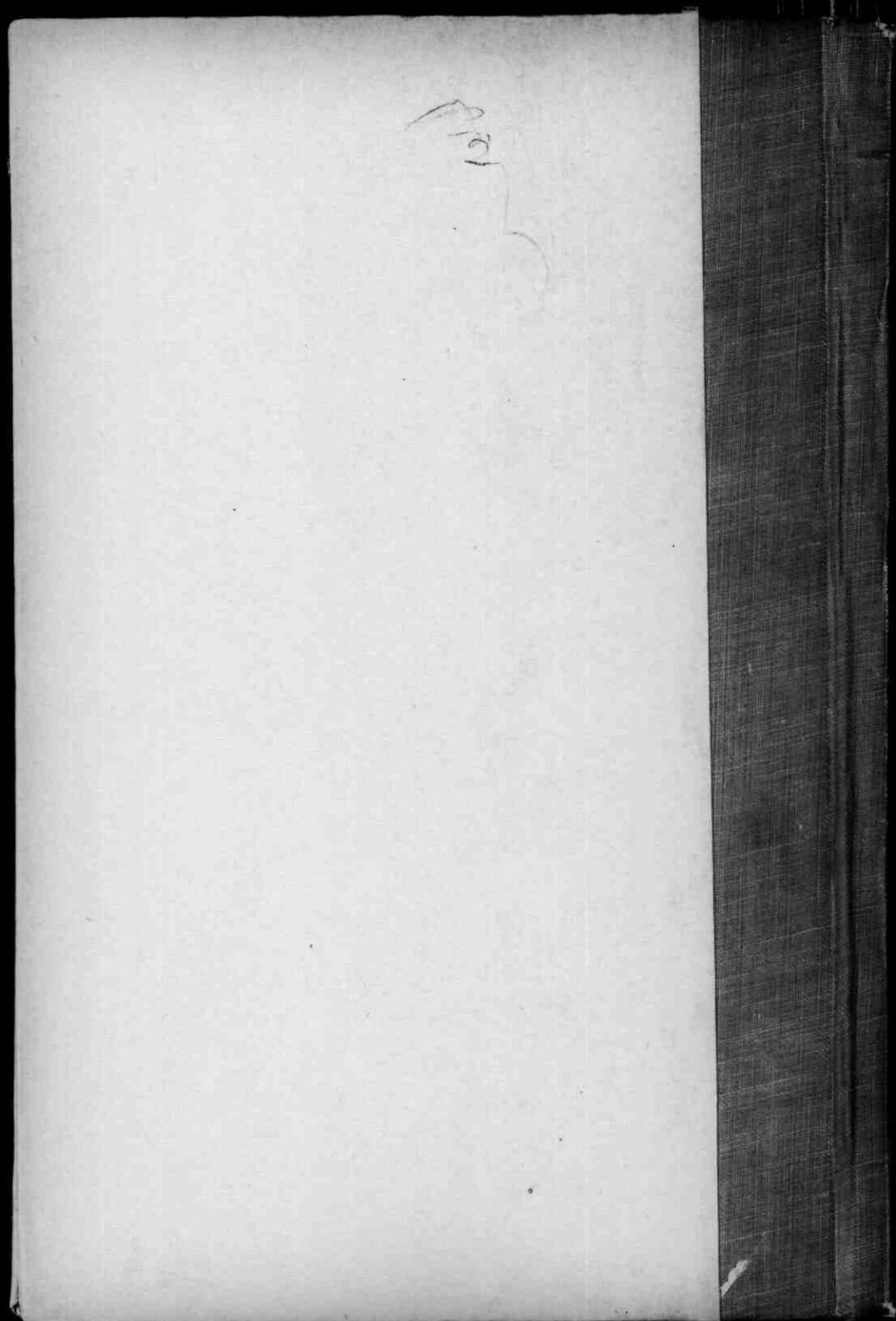
#### DEFINITIONS

SEC. 7. Words of the masculine gender shall include the feminine gender; "employment quota" shall mean the number of hours of work per month per employee found by the board of the national trade association; and the words "compensation quota" shall mean the payment due the worker applicant who is not provided with work equal to the employment quota to which he is entitled. Within the limitations of such appropriations as the Congress may from time to time provide, the Federal Trade Commission is authorized to appoint and fix the salaries of such special experts as it may find necessary and, subject to the civil service laws and the classification act of 1923, as amended, to appoint such assistants and clerks and make such expenditure as may be necessary for the performance of the duties vested in it by this act.

JUN 23 1933







**END OF  
TITLE**